

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO,
MISael ALEXANDER MARTINEZ CASTRO, ANGEL
MARTINEZ, EDWIN ULLOA MOREIRA and MATEO
UMAÑA individually and on behalf of all others similarly
situated,

**Case No. 21-cv-09014
(PAE)(SDA)**

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW, JOHN
KELLY and JOSEPH PROVENZANO,

Defendants.

DECLARATION OF CARLOS ALVAREZ CHICAS

I, Carlos Alvarez Chicas, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was employed by the Kelco Construction, Inc. ("Kelco") from about March 2017 until about March 2021.

2. I worked as a laborer and form setter. My duties included forming and finisher of pavements where people walk, we did small excavations and building playgrounds. My responsibilities included transporting other employees, tools and materials in a company vehicle to worksites.

3. Kelco and E.L.M. General Construction Corp. d/b/a Kelly's Crew ("ELM") have offices located at 25 Newton Place, Hauppauge, New York ("the Hauppauge facility").

4. The Hauppauge facility consists of offices, a prefabricated steel warehouse and storage facility, a yard (for storing mulch, topsoil, and other landscaping and construction

materials), shipping containers for storing tools and equipment, large waste containers, and a parking lot.

5. Kelco performed most of its work in New York City. When I worked, Kelco and ELM employed at least 120 laborers. All of the Kelco drivers and ELM employees reported to the Hauppauge facility before 4:30 AM each morning. All Kelco employees other than drivers were expected to be at a park and ride to be picked up by the pickup trucks to then drive together into the city. On rare occasions we would be expected to report at 4:00 AM or 5:00 AM.

6. Upon arriving at the Hauppauge facility, the Kelco drivers and ELM employees would load materials and tools needed to complete the work that day on the company vehicles. The foreman or supervisor for each vehicle would then do an inventory of materials and tools to make sure everything was loaded. Then the Kelco drivers would drive to the park & ride to pick up the other workers and we would travel in the company vehicles to the jobsites in New York City. At the end of the day, the Kelco drivers would drop off the other employees back at the park and ride and then drive back to the Hauppauge facility. When we arrived at the Hauppauge facility at the end of the day, we would unload any unused materials and tools from the truck. We would also unload waste and garbage which we had collected during the day, and we would dump it into the waste containers located at the Hauppauge facility. We would make sure the trucks were cleaned and organized at the end of each day. At the end of the week, on Fridays, upon arriving at the Hauppauge facility, we would clean the inside and outside of the vehicles using soap, water, brushes, hoses, and vacuums which were provided by Kelco/ELM specifically for that purpose.

7. My coworkers and I were not paid from the time we arrived at the Hauppauge facility until the vehicles were unloaded and cleaned at the end of the day. Instead, we were paid

for the time we arrived at the jobsite. We were only paid from the time we were scheduled to start work at the jobsite (6AM or 7AM) until we left the jobsite to return to the Hauppauge facility. Kelco employees who drove the company vehicles were sometimes paid for driving by ELM at \$15 per hour for three hours (“drive time bonus”). The drive time bonus was not based on the number of hours we drove.

8. The reason why I believe that all of my co-workers were only paid for the scheduled time is that we all talked about it and complained, it was very frustrating because nothing was ever done about it. On one occasion Francisco, Mori, Osman, Alonso, Denis, Noel, Jose Flores were having conversations about the situation. Eduardo (a foreman), as well as Necdaly (a manager) and Joe Provenzano (the general manager) said on separate occasions that if we didn’t want to receive drive time pay, we could drive our own cars to Manhattan.

9. One time I worked at Pier 2 from 6am to 6pm because the super wanted to finish the job. When I saw my paycheck, I realized I only got paid for eight hours and so I spoke to Pablo Oliveira, my supervisor, about it and he said that I didn’t have a right to speak to the office to complain about the time that was not paid. He said that he will solve it, but a week went by and nothing happened, so then I told the general manager and the supervisor got upset with me and said again that I didn’t have a right to do that and they gave me a personal check instead of paying me the overtime.

10. Kelco and ELM issued separate paychecks to me for work performed during the same workweek.

11. Kelco and ELM did not combine the hours worked for purposes of paying overtime wages to employees.

12. I believe that there were other Kelco employees who were paid by ELM for overtime hours at rates less than 1 ½ times the regular rate of pay. The reason I believe this is because we would all talk about how much we were getting paid.

13. My primary language is Spanish. On December 22, 2022, this declaration was verbally translated to me into Spanish by Shirley Navarro-Losito.

14. I ask that the Court please authorize notice to my co-workers of the right to join this case.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated:



Carlos Alvarez Chicas

eSignature Details

Signer ID: **trHx3K8YfxjrhyrvFHEm9imp**
Signed by: Carlos Alvarez Chicas
Sent to email: cat0211@hotmail.com
IP Address: 68.132.47.23
Signed at: Dec 22 2022, 2:05 pm EST